

III. Remarks

Applicants extend their thanks to the Examiner for his comments in the most recent office action. Support for the inherent amendment can be found on page 2, lines 5-6, page 7, lines 22-23 and figure 1, page 1. Applicants have adopted those comments in so far as no additional limitations were made. No estoppel should result.

A. Claim Rejections Under 35 USC §102(b)

Claims 1, 3, 5, 7, and 8 stand rejected as being anticipated by US Pat. No. 1,655,158 (hereinafter referred to as the '158 patent). The Examiner contends that the '158 patent discloses a preloadable implantation device comprising a needle, and an elongated part, a plunger, the periphery of the plunger defining a channel, a chamber and a door. The Examiner specifically directs attention to reference numbers 20, 23, and 24, along with Figures 1-10 and the entire reference. Specific reference is made to Figures 4-9 for a chamfered needle. Further, specific reference is made to Figures 4-8 for wherein the outside is closed after preloading. However, the '158 patent discloses a device different than the claimed device of Applicants' invention. Accordingly, Applicants respectfully request reconsideration of the rejection in light of this response.

Applicants have incorporated that the chamber is located on or above the channel and is closed in the preloaded state. Such limitation renders the Claims patentable over the cited art. However, the addition of such limitation does not create any estoppel, as the limitation was inherent from the disclosure. No broader interpretation could be given than that of the amended claims. It is quite obvious that the device of the '158 patent is not closed off in the preloaded state.

The device of the '158 patent is loaded at the time of implantation with a removable radon seed and then inserted into the patient without delay, "the instrument having been loaded, it is then inserted into the tissue 34 to be treated." See '158 patent, page 8, lines 5-7. Therefore, the device of the '158 patent does not anticipate Applicant's invention.

Claims 1 and 3-8 stand rejected under 35 USC §102(b) as being anticipated by US Pat No. 5,405,324 (hereinafter referred to as the '324 patent). The Examiner contends that the '324 patent discloses a preloadable implantation device comprising a needle, and an elongated part, a plunger, the periphery of the plunger defining a channel, and a chamber. The Examiner directs attention to Figures 1-3 of the '324 patent. The Examiner further refers to the Figures for contention that the needle and plunger are chamfered and the outside is closed after preloading, in the '324 patent. Applicants respectfully request reconsideration of the rejection in light of this response.

The device of the '324 patent similarly is not designed to be preloaded. It is clear that the device is intended specifically to be loaded at the time of insertion of the implant into the patient, "the implant is placed in the cup-shaped space using tweezers....the implant enters the bore.....the implant can now easily be pushed through the hollow needle into the subcutaneous tissue using the mandrel." See the '324 patent, column 3, lines 42-54. With this device, the possibility therefore still exists that the implant could be accidentally dropped during the operation or there could be unintentional bacterial contamination by the manipulations of the physician.

B. Claim Rejections Under 35 USC §103

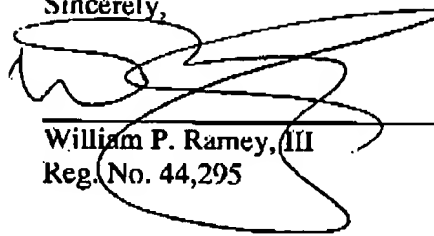
Claims 1 and 3-8 stand rejected as being unpatentable over the '158 patent in further view of US Pat. No. 5,405,324 (hereinafter referred to as the '324 patent). The Examiner asserts that the '324 patent discloses the implanter as a hormonal implanter and concludes it would be within the level of ordinary skill in the art to combine the teachings of the '324 patent and the '158 patent because it is known to use different medications with an implanter. Applicants respectfully request reconsideration in light of this response.

Applicants have incorporated that the chamber is closed-off in the preloaded state. Such limitation renders the Claims patentable over the cited art. However, the addition of such limitation does not create any estoppel, as the limitation was inherent from the disclosure. No broader interpretation could be given than that of the amended claims.

IV. Conclusion

Applicants respectfully request reconsideration of the rejections in light of this submission. The application is believed in a condition for allowance and Applicants respectfully request such action. Please call the below undersigned attorney for any assistance in securing allowance of this application and for an interview. Please charge deposit account number 02-2334 for any required fees and to credit any credits. Further, Applicants hereby petition for a one-month extension of time and respectfully request that the fee be charged to deposit account 02-2334.

Sincerely,

A handwritten signature in black ink, appearing to read "William P. Ramey, III", is written over a horizontal line. The signature is stylized with loops and flourishes.

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